

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

RICHARD MESSENGER,

Plaintiff.

v.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

13 OCT 9 AM '13 30
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

3:13cv1098

COMPLAINT AT LAW

NOW COMES the Plaintiff, RICHARD MESSENGER, by and through his attorneys, GEORGE T. BRUGESS and HOEY & FARINA, P.C. and for his Complaint against Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, states as follows:

1. Jurisdiction of this Court is invoked under the provisions of Title 45 U.S. Code sec. 56.

2. This action arises under, and the rights and liabilities of the parties to this cause are governed by, the Federal Employers' Liability Act, 45 U.S.C. sec. 51 et seq. and similar state statute.

3. At all times herein, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, was and is a railroad corporation doing business in the State of Indiana.

4. At all times herein, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, was a common carrier by railroad engaged in interstate commerce.

5. At all pertinent times, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, owned, maintained and operated the Elkhart Yard in Elkhart, Indiana.

- (a) failed to keep track of cumulative trauma injuries;
- (b) failed to supply its employees with safe and suitable tools;
- (c) failed to provide sufficient manpower to perform assigned tasks, thereby decreasing the risk of repetitive and vibratory trauma;
- (d) assigned Plaintiff to perform tasks it knew or should have known presented an unreasonable risk of harm to Plaintiff;
- (e) failed to warn its employees of the dangers of certain repetitive and vibratory tasks;
- (f) failed to promulgate rules governing repetitive and vibratory tasks to limit times performing said tasks; and
- (g) was otherwise careless and negligent in failing to provide Plaintiff with a safe place to work.

15. Defendant's failure to provide Plaintiff, RICHARD MESSENGER, with a safe place to work by one or more of the aforementioned negligent acts or omissions caused, in whole or in part, Plaintiff's injuries.

16. As a consequence, Plaintiff, RICHARD MESSENGER, incurred injuries which have caused and may continue to cause him pain, suffering, inconvenience, anguish and disability; as a further result, Plaintiff, RICHARD MESSENGER, has been and may in the future be kept from attending to his ordinary affairs and duties, and has lost and may lose great gains which he otherwise would have made and acquired; as a further result, Plaintiff, RICHARD MESSENGER, has incurred medical, hospital and related expenses and is reasonably certain to incur further medical, hospital and related expenses in the future.

WHEREFORE, the Plaintiff, RICHARD MESSENGER, demands judgment in his favor and against Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, in a sum in excess of \$100,000.00 plus the costs of this suit.

6. On and prior to November 1, 2010, the Plaintiff was employed by Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, as a Conductor.

7. Plaintiff was injured while working for Defendant.

8. On or about November 1, 2010 severe and disabling injuries to Plaintiff's body manifested.

9. Since approximately November 1, 2010, Plaintiff discovered that he suffers from Carpal Tunnel Syndrome and Cubital Tunnel Syndrome.

10. Defendant knew or should have known that the risk factors for Carpal Tunnel Syndrome and Cubital Tunnel Syndrome are repetitive hand, wrist and elbow motions, hand, wrist and elbow joint deviations, forceful use of the hand, wrist and elbow and vibration.

11. That, notwithstanding said knowledge, on a daily basis Defendant ordered Plaintiff to perform work that required Plaintiff to repetitively use his hands, wrists and elbow to deviate his hand, wrist and elbow joints, to use his hand, wrist and elbow joints under force and to use vibratory equipment.

12. As a result of performing said activities as ordered by his supervisors, Plaintiff was seriously injured.

13. At all times Defendant had a non-delegable duty to provide Plaintiff with a reasonably safe place to work.

14. In violation of its duty, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, negligently and carelessly failed to provide Plaintiff, RICHARD MESSENGER with a safe place to work by committing one or more of the following negligent acts or omissions:

Respectfully submitted,
HOEY & FARINA, P.C.

By:


George T. Brugess

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